

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

|                               |   |                     |
|-------------------------------|---|---------------------|
| In the matter of the          | ) | NOTICE OF AMENDMENT |
| amendment of ARM 24.29.1401,  | ) | AND ADOPTION        |
| 24.29.1402, 24.29.1404,       | ) |                     |
| 24.29.1415, 24.29.1430,       | ) |                     |
| 24.29.1510, 24.29.1517,       | ) |                     |
| 24.29.1521, and 24.29.1582    | ) |                     |
| and the adoption of NEW RULES | ) |                     |
| I and II, all related to      | ) |                     |
| allowable medical service     | ) |                     |
| billing rates for workers'    | ) |                     |
| compensation claims           | ) |                     |

TO: All Concerned Persons

1. On November 9, 2006, the Department of Labor and Industry published MAR Notice No. 24-29-213 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 2759 of the 2006 Montana Administrative Register, issue no. 21.

2. On December 7, 2006, the department held a public hearing in Helena regarding the above-stated rules. No comments were received from the public. No written comments were received prior to the closing date of December 14, 2006.

3. The substance of the proposal was identical to a proposal made by the department on April 20, 2006, MAR Notice No. 24-29-204, at page 1005 of the 2006 Montana Administrative Register, issue no. 8. The proposal was renoticed to cure a procedural error made by the department in the rulemaking process. On May 11, 2006, the department held a public hearing in Helena regarding the above-stated rules. The Final Notice for this proposal contains the department's responses to the comments made with regard to both notices.

4. The department has thoroughly considered the comments received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: The Montana Self-Insurers Association suggested striking the reference to the "Occupational Disease" act in ARM 24.29.1401(3) because rules are typically effective on the date of adoption and the Occupational Disease Act was repealed during the 2005 legislative session.

Response 1: Because ARM 24.29.1401(3) applies to occupational disease claims with dates of injury prior to 2005 that are still covered by the now repealed Occupational Disease Act, the department will not change the rule as suggested.

Claims are still covered by the repealed Act because the law in effect on the date of injury controls.

Comment 2: With regard to ARM 24.29.1402(6)(a), the Montana Self-Insurers Association suggested clarifying the co-payment provision by striking "enough advance notice" and inserting "10 day notice." The association suggested the word "enough" is subject to varying interpretation.

Response 2: This language existed in the previous rule and is simply being moved from one place to another within the same rule. To the department's knowledge, varying interpretations of the phrase "enough advance notice" have not caused significant problems for insurers or providers. The language allows insurers and providers the flexibility to incorporate proper notice into their current billing practices. Therefore, the department will not make the suggested change.

Comment 3: With regard to ARM 24.29.1510(4), the Montana Self-Insurers Association suggested striking "ARM 24.29.1517, and any other applicable rule or statute" and "this rule," and instead inserting "these rules."

Response 3: The department specified ARM 24.29.1517 in order to make the rules easier to navigate for readers. The department declines to make the suggested change.

Comment 4: Also with regard to ARM 24.29.1510(4), the Montana Self-Insurers Association suggested striking "if" and inserting "during the period of time."

Response 4: The department declines to make the suggested change, as the purpose of the rule is to clarify that a claimant may receive treatment from as many physicians as required by their injury or occupational disease. Adding "during the period of time" in this rule would not clarify the issue because the time a claimant is covered is set by other statutes and rules.

Comment 5: With regard to ARM 24.29.1517(1), the Montana Self-Insurers Association requested clarification because (1) added "as provided in (4)" but (4) was not reprinted in the notice.

Response 5: The Secretary of State's requirements for the published notices setting forth proposed rule changes do not require reprinting of rule sections that are not changed in order to prevent unnecessary duplication and lower processing and printing costs. The department refers the commenter to the existing rules in the Montana Administrative Rules for comparison to the rules notice. In addition to the rule text being available on the department's web site, the department will furnish a copy of the complete rule text upon request.

Comment 6: With regard to ARM 24.29.1517(1), the Montana Self-Insurers Association suggested changing the phrase "reasonable amount of time" to

specifically state the number of days in advance the provider must request prior authorization.

Response 6: The department will not make the suggested change as timelines are addressed in sections (2) and (3) of this rule. Further, no new language was proposed with regard to the language noted by the commenter. Therefore, under the Montana Administrative Procedure Act, the department declines to make any changes to that language in this notice of adoption.

Comment 7: With regard to ARM 24.29.1521, the Montana Self-Insurers Association suggested striking "through" and inserting "by."

Response 7: The department declines to make the suggested change because it believes the word "by" could be interpreted too narrowly.

5. After consideration of the comments, the department has amended the above-stated rules exactly as proposed.

6. The department has adopted NEW RULE I (ARM 24.29.1431) exactly as proposed.

7. The department has adopted NEW RULE II (ARM 24.29.1584) exactly as proposed.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 12, 2007